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future interest had commencement, then he had such present estate in the land which might be divested, and which he might re-vest by his entry. As if a man makes a lease for years, in this case before the lessee enters he has an estate for years in the land which he may (e) grant. And the words of Littleton were well observed, lib. 1. c. 7. fol. 13. b. if a man makes a lease for years, and before the lessee enters the lessor dies, yet the lessee may (f) enter, because the lessee by force of the lease has a present right to have the tenements according to the form of the lease. And Lit. lib. 3. cap. 8. fol. 107. if a man leases his land for years, if the lessor releases to the lessee all his right before the lessee has entered into the land, such (g) release is void (B), because the lessee had not possession in the land at the time of the release made, but only a right to have the same land by force of the same lease: and *eodem lib.* fol. 127. if a man leases tenements for years, by force of which the lessee is seised, that is, possessed, and afterwards the lessor by his deed grants the reversion to another for life, &c. it is necessary in such case that the tenant for term of years (a) attorn (c): by which it appears, that before the lessee enters, he has not actual possession, nor (as it seems) the lessor has not such a reversion that he can grant it over by the name of the (b) reversion, but yet such lessee has more than he who has a future interest, for he may presently enter and take the profits, so that his interest, accompanied with present entry and ability to take the profits which he may transfer to another, may be divested out of him, and put to a mere right not grantable: and so the difference appears between the case at Bar and (c) *Saunders's case*, which was adjudged in 21 Eliz. for there at the time of the fine levied the lessee had not power to enter or take the profit, but only a future interest, which (if it could be divested) he had not any means possible to re-vest in him again (D).

[125 a] THE CASE DE LIBELLIS FAMOSIS, or of SCANDALOUS LIBELS.

Pasch. 3 Jac. 1<sup>o</sup>.

A libel is made either against a private person, or a magistrate, or public person; and in either case is punishable, although the party libelled is dead at the time of making the libel.

A libeller shall be punished either by indictment by common law, or by bill, or *ore tenus* on his confession in the Star Chamber, and may be punished by fine, imprisonment, and by pillory and loss of ears.

It is not material, whether the libel be true or false.

A libel is either *in scriptis* or *sine scriptis*.

A libel *in scriptis* is, when an epigram, rhyme, or other writing is composed or published, to the scandal or contumely of another.

The publication may be, 1. *Verbis aut cantilenis*. 2. *Traditione*.

A libel *sine scriptis* may be, 1. *Picturis*. 2. *Signis*.

If one find a libel against a private person, he may either burn it or deliver it to a

(e) Cr. Jac. 60. Cr. El. 15. 127.

(f) Lit. sect. 66. Co. Lit. 51. b.

(g) Lit. sect. 459. Hetl. 81. Co. Lit. 46. b. 270. a. Lit. 108. b. Perk. sect. 603. 22 E. 4. 37. a.

(B) This must be understood of a lease at common law, for where the lease is created by bargain and sale, under the Statute of Uses, there is no necessity of an actual entry to make the lessee capable of taking a release. *Isham v. Morris*, Cro. Car. 110. *Barker v. Keate*, 2 Mod. 249.

(a) Co. Lit. 315. b. Lit. sect. 567. Lit. 128. b.

(c) Attornment unnecessary, 4 Ann. c. 16.

(b) Cr. Car. 110. 400. Cr. Jac. 604. Godb. 451. 10 Co. 171. b.

(c) Goldsb. 171, 172. Cr. Jac. 60, 61. Cart. 82. 2 Leon. 157. 1 Leon. 99. Raym. 149.

(D) *Vid. Henning v. Brabason*, O. Bridgm. Rep. 11. *Willis v. Shorral*, 1 Atk. 474.

magistrate: but if it be against a public person, he ought to deliver it to a magistrate.

In the case of L. P. in the Star-Chamber this term, against whom the Attorney-General proceeded *ore tenus* on his own confession, for composing and publishing an infamous libel in verse, by which John Archbishop of Canterbury (who was a prelate of singular piety, gravity, and learning, *now dead*) by descriptions and circumlocutions, and not in express terms; and Richard Bishop of Canterbury who now is, were traduced and scandalized: in which these points were resolved:

1. Every libel (which is called *famosus libellus, seu infamatoria scriptura*), is made either against a private man, or against a magistrate or public person. *If it be against a private man it deserves a severe punishment*, for although the libel be made against one, yet it incites all those of the same family, kindred, or society to revenge, and so tends *per consequens* to quarrels and breach of the peace, and may be the cause of shedding of blood, and of great inconvenience: *if it be against a magistrate, or other public person, it is a greater offence*; for it concerns not only the breach of the peace, but also the scandal of Government; for what greater scandal of Government can there be than to have corrupt or wicked magistrates to be appointed and constituted by the King to govern his subjects under him? And greater imputation to the State cannot be, than to suffer such corrupt men to sit in the sacred seat of justice, or to have any meddling in or concerning the administration of justice.

2. *Although the private man or magistrate be dead at the time of the making of the libel, yet it is punishable*; for in the one case it stirs up others of the same family, blood, or society, to revenge, and to break the peace, and in the other the libeller traduces and slanders the State and Government, which dies not.

3. A libeller (who is called *famosus defamator*) shall be punished either by indictment at the common law, or by bill, if he deny it, or *ore tenus* on his confession [125 b] in the Star-Chamber, and according to the quality of the offence he may be punished by fine or imprisonment; and if the case be exorbitant, by pillory and loss of his ears (A).

4. It is not material whether the libel be true, or whether the party against whom it is made, be of good or ill fame; for in a settled state of Government the party grieved ought to complain for every injury done him in an ordinary course of law, and not by any means to revenge himself, either by the odious course of libelling, or otherwise: he who kills a man with his sword in fight is a great offender, but he is a greater offender who poisons another; for in the one case he, who is openly assaulted, may defend himself, and knows his adversary, and may endeavour to prevent it: but poisoning may be done so secretly that none can defend himself against it; *for which cause the offence is the more dangerous, because the offender cannot easily be known*; and of such nature is libelling, it is secret, and robs a man of his good name, which ought to be more precious to him than his life, & *difficillimum est invenire authorem infamatoriae scripture*; and therefore when the offender is known, he ought to be severely punished. Every infamous libel, *aut est in scriptis, aut sine scriptis*; a scandalous libel *in scriptis* is, when an epigram, rhyme, or other writing is composed or published to the scandal or contumely of another, by which his fame and dignity may be prejudiced. And such libel may be published, 1. *Verbis aut cantilenis*: as where it is maliciously repeated or sung in the presence of others. 2. *Traditione* (B), when the libel or any copy of it is delivered over to scandalize the party. *Famosus libellus sine scriptis* may be, 1. *Picturis*,

(A) Punishment of the pillory, except in a few cases, abolished by 56 Geo. III. c. 138.

(B) In *Rex v. Burdett*, 4 B. & A. 95. it was held by three Judges, *dubitante* Bayley, J., that a delivery of a sealed letter at the post-office is a publication of the libel in the county in which the post-office is situated; and *vid.* the observations of Holroyd, Justice, p. 143. upon the sense in which the word *publishing* is used in law. In the same case it was further held by Abbot, C.J., Holroyd, J. and Best, J., that when a defendant writes and composes a libel in one county, with intent to publish, and afterwards does publish it in another, that he may be indicted for a misdemeanour in either county; and *vid.* *Pearson v. Mac Gowan*, 3 Barn. & Cress. 700.

as to paint the party in any shameful and ignominious manner. 2. *Signis*, as to fix a gallows, or other reproachful and ignominious signs at the party's door or elsewhere. And it was resolved, Mich. 43 & 44 Eliz. in the Star-Chamber in *Hollivood's case*, that if one finds a libel (and would keep himself out of danger), if it be composed against a private man, the finder either may burn it, or presently deliver it to a magistrate: but if it concerns a magistrate, or other public person, the finder ought presently to deliver it to a magistrate, to the intent that by examination and industry, the author may be found out and punished. And libelling and calumny is an offence against the law of God. For Leviticus 17, *Non facias calumniam proximo*. Exod. 22. ver. 28, *Principi populi tui non maledices*. Ecclesiastes 10, *In cogitatione [126 a] tui ne detrahas Regi, nec in secreto cubiculi tui diviti maledices, quia volucres celi portabunt vocem tuam, & qui habet pennas annuntiabit sententiam*. Psal. 69. 13, *Adversus me loquebantur qui sedebant in porta, & in me psallebant qui bibebant vinum*. Job. 30. ver. 7. & 8, *Filii stultorum & ignobilium, & in terra penitus non parentes, nunc in eorum canticum versus sum, & factus sum eis in proverbium*. And it was observed, that Job, who was the mirror of patience, as appears by his words, became *quodammodo* impatient when libels were made of him; and therefore it appears of what force they are to provoke impatience and contention. And there are certain marks by which a libeller may be known: *quia tria sequuntur defamatorem famosum*: 1. *Pravitate incrementum*, increase of lewdness: 2. *Bursæ decrementum*, decrease of money, and beggary: 3. *Conscientiæ detrimentum* shipwreck of conscience.

[See the case of *The King* against *Payne*, Carth. 405. See also 5 Mod. 163. 1 Salk. 211. Fitzgib. 121. 253.] *Note to former edition.*

[Note, see the debate upon this matter, where a man may conceal a libel and when not. Rushw. Coll. fo. 812. the case of *The Bishop of Lincoln and Osbaston*; and also, what is a libel, and the etymology of it.] *Note to former edition.*

### [126 b] PALMER'S CASE.

Pasch. 3. Jacob. 1.

In the King's Bench.

Guardian in chivalry shall have the single value of the marriage of the heir without any tender. S. C. [Cro. Jac. 66. Yelv. 59].

Between (a) Palmer and Wilder, for a ward in the county of Oxford, the only question in the case was, if the guardian in chivalry shall have the single value of the heir without any tender: and it was objected, that the guardian should not have it without a tender, for four reasons.

1. Litt. lib. 2. cap. 4. fol. 21. and all the books agree, that knight's service (A) draws to it ward, marriage, and relief; and the stat. of Merton, (b) cap. 7. saith, *quod maritagium ejus qui infra ætatem est de mero jure pertinet ad dominum feodi*, so that the marriage of the heir within age doth belong by the law in such case to the lord; then if the heir will perform that which the law requires, *scil.* to be married by his guardian, there is no reason that he should render any value for it; for Littleton doth not say, that knight's service draws to it the value of the marriage, but the marriage itself; and the stat. of Merton doth not say, *quod valor maritagi ejus de mero jure pertinet ad dominum feodi, sed maritagium ejus de mero jure pertinet, &c.* Suppose then that A. covenants with B. that B. shall have the marriage of A. and that he will be married to her whom B. will nominate to him; in this case if A. be ready to be married according to his covenant, and B. will not nominate any, he shall never render any value for it:

(a) 6 Co. 70. b.

(A) Tenure, by knight's service, with its fruits and consequences, abolished, and every such tenure converted into free and common socage by 12 Car. 2. c. 24.

(b) 2 Inst. 92, 93, &c. Cr. El. 469.